

Exhibit A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
4 EDDYSTONE RAIL COMPANY, LLC,
5 Plaintiff,
6 v.
7 JAMEX TRANSFER SERVICES, LLC,
8 Defendant.
9 -----x

17 Civ. 01266 WHP

April 13, 2017
11:05 a.m.

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15 Before:
16 HON. WILLIAM H. PAULEY III,
17 District Judge
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1 (In open court)

2 (Case called)

3 THE COURT: Good morning, everyone. Please be seated.

4 So, Mr. Agusti, briefly do you want to describe the
5 nature of the proceeding here.

6 MR. AGUSTI: Yes, your Honor.

7 Your Honor, we are represent Eddystone Rail Company,
8 and essentially at the beginning of this case there is a
9 contract that Eddystone entered into. Eddystone is a facility
10 on the banks of the Delaware River about a few miles from
11 Philadelphia, and essentially what this facility does, it
12 trans-loads crude oil from railcars to barges, and the barges
13 would then take the oil, this crude oil, to refineries
14 downstream Trainer, Pennsylvania.

15 The contract that it had was with a entity called
16 Bridger Transfer Services. Bridger Transfer Services has
17 entered into a take-or-pay contract with Eddystone, under which
18 it would either deliver 65,000 barrels of crude oil a day or it
19 would pay for not doing so. Our client, Eddystone Rail
20 Company, relied on the existence of this contract in order to
21 build the facility, which ended up costing it about \$170
22 million.

23 In February 1st of 2016, the company Bridger Transfer
24 Services was transferred by the proposed intervenors to a shell
25 company called Jamex Transfer Holdings, and immediately

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1 thereafter Jamex Transfer Holdings defaulted on the contract
2 and no more railcars ever came to the facility. What happened
3 then was that, of course, under the terms of the rail contract,
4 Eddystone was obligated to proceed with an arbitration in front
5 of the Society of Marine Arbitrators. That arbitration began,
6 we initiated it on April 19th of 2016.

7 The first hearing on that arbitration was on June
8 29th, a couple of months later. It is important to note
9 actually for the purposes of the motion for intervention that
10 at that hearing on the record, counsel for transfer services
11 noted that he had been in communication with the proposed
12 intervenors in order to try to obtain documents for the
13 arbitration, and they had discussed the arbitration. And so
14 certainly we have on record that as of June 29th, the proposed
15 intervenors were aware just weeks actually after the initiation
16 of the arbitration the proposed intervenors had knowledge of
17 the fact the arbitration was proceeding.

18 It is clear from the public record that on July 13th
19 Eddystone, we, served a subpoena that was issued by the
20 arbitrable panel on Ferrellgas, the proposed intervenors. At
21 the time Messrs. Rios and Gamboa, who are separately
22 represented here, were the principal employees running Bridger
23 Logistics, a relevant subsidiary of Ferrellgas.

24 On July 13th, we served a subpoena. The reason it is
25 a matter of public record is because Ferrellgas initially

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1 resisted the subpoena, and so we had to initiate a proceeding
2 in the Southern District of New York to enforce the subpoena.
3 The arbitration, by its terms, was conducted here in New York
4 in front of Judge Caproni, and so it is clear on the record
5 that from that time in July the current proposed intervenors
6 had knowledge of the arbitration.

7 What happened then is that we had disputes.

8 Ultimately the proceeding, the document proceeding was
9 resolved among the parties. Judge Caproni entered a stipulated
10 order, and discovery proceeded throughout the fall. Indeed,
11 the final documents were provided to us by the proposed
12 intervenors in early January.

13 Your Honor, what happened was that ultimately in this
14 arbitration, as in many cases, there was a settlement reached
15 by the parties, by the party then, the transferee of Bridger
16 Transfer Services, you recall that on February 1, 2016, Bridger
17 Transfer Services had been transferred, or at least the
18 Philadelphia, as we allege in the Philadelphia action.

19 At that point it was a shell entity. It had no
20 assets, and part of the reason why we needed to get documents
21 was because the operational documents for this entity had
22 remained with the proposed intervenors. So, in any event, the
23 parties reached a settlement. Pursuant to the rules of the
24 Society of Maritime Arbitrators, there was a settlement award
25 that was entered on January 24. On February 2 we began our

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1 action against the proposed intervenors, the action in
2 Philadelphia, the Eastern District of Pennsylvania. The action
3 basically has three basic theories:

4 One of them is that the entity was an alter ego of the
5 proposed intervenors;

6 The second theory is that they stripped Bridger
7 Transfer Services of its assets just prior to the February 1,
8 2016 transfer. There are audited financial statements
9 indicating that Bridger Transfer Services had assets of close
10 to \$100 million as of December 31, 2013. On January 13, 2016,
11 the proposed intervenors, in a transactional document,
12 indicated that by that point Bridger Transfer Services had no
13 assets, and that is, of course, all in the Philadelphia
14 lawsuit;

15 Finally, the final theory has to do with a breach of
16 the fiduciary duty that directors and officers of an insolvent
17 entity owe its creditors, and, of course, the primary creditor
18 of Transfer Services was Eddystone.

19 Your Honor, that action is February 2, began February
20 2 in Philadelphia. The proposed intervenors, defendants in
21 that case, have filed a motion to dismiss. It turns out that
22 today we will be filing our opposition to their motion, and the
23 case expects to proceed in Philadelphia.

24 Meanwhile, a little after we filed the lawsuit against
25 the proposed intervenors in Pennsylvania, we filed this

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1 petition to confirm the award that had been entered by the
2 arbitrable panel on January 24th. The concept here is just
3 simply to have a final judgment reflecting the arbitrable
4 award. In the ordinary process, that is contemplated by the
5 Federal Arbitration Act. Of course, as the court knows, the
6 proposed intervenors have filed a letter requesting briefing on
7 the motion to intervene.

8 Our view, your Honor, is that it's quite clear that
9 they are not entitled to intervene for the following reasons:

10 Section 10 of the Federal Arbitration Act makes clear
11 that a party can only seek to vacate an arbitrable award if it
12 was a party to the arbitration. Similarly, Section 11 of the
13 Federal Arbitration Act says that you have to be a party to the
14 arbitration to seek a modification of that award.

15 So it is clear from the words of the statute that only
16 parties to the arbitration are supposed to get involved in this
17 proceeding, which is nothing more than a petition to confirm
18 the award. That has been upheld by the cases cited in our
19 letter; Dundas, Katir, Meshkin all enforce that rule.

20 The proposed intervenors have pointed to a case called
21 Associated Contracting Plumbers, in which the Second Circuit
22 created a limited exception to that rule, in a situation where
23 the proposed intervenor did not know of the intervention and
24 the proposed intervenor or the arbitrable award, and the court
25 judgment directly and immediately affects the proposed

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1 intervenor. We think that neither of those conditions are
2 satisfied here.

3 I just want to go very, very quickly on the
4 Contracting Plumbers case because I think it is important here,
5 your Honor. Basically that was a case in which an
6 international union that included pipe fitters and plumbers had
7 established, had a right under the Constitution, the contract
8 among the unions, to establish work jurisdiction among the
9 unions. It decided that it was for some particular jobs here
10 in New York City, it was going to grant jurisdiction to the
11 pipe fitters union.

12 The plumbers union were not happy with that result,
13 and without telling the international union, an arbitration was
14 initiated between the employer association, the contractors
15 that hire plumbers, and the plumbers union. There were two
16 different proceedings, but they were essentially for the same
17 purpose, and at that proceeding, the result of that proceeding
18 was that the arbitrator, without any knowledge really of the
19 issues that involved the international union, entered an award
20 actually in favor of the plumbers association, which said that
21 the work that enjoined actually or that said that the local
22 plumbers unions should do the work.

23 They then went to the district court here in the
24 Southern District of New York and got the award confirmed and
25 got permanent injunctions entered enjoining the local unions to

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1 go ahead and do the work. So, in other words, the permanent
2 injunctions from the confirmed award directly took away the
3 right of the international union to assign work immediately.
4 There was nothing contingent about it, it was a direct assault
5 on the international union because the international union had
6 already awarded that to someone else.

7 Now, under those circumstances, Judge Lombard found
8 that, in fact, you could have someone directly affected in that
9 way like the international union that hadn't known about the
10 existence of the arbitration an opportunity to vacate the
11 award. Your Honor, that's quite different than the situation
12 we have here.

13 First of all, as I have said in explaining the facts,
14 the proposed intervenors here had knowledge of our arbitration
15 going back to weeks after the beginning of the arbitration.
16 Since they had not consented to the arbitration, we really
17 weren't in a position to include them in the arbitration, but
18 essentially they were in a situation where they were perfectly
19 aware that this was going on.

20 THE COURT: But what occurred in the arbitration other
21 than an agreement by Jamex to settle?

22 Was there a hearing?

23 MR. AGUSTI: Yes, sir, on June 29th there was a
24 hearing at which we, in which we actually presented our case,
25 our case in chief. Basically then there was a recess for the

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1 folks at Jamex to prepare their defense and, indeed, for
2 document discovery to occur. That was in the context that we
3 went through document discovery. And so then there was a
4 settlement before the final hearing, where Jamex would have
5 presented its defense, and an award, an award was entered.

6 So the point is, your Honor, that the proposed
7 intervenors had knowledge that the arbitration was going on,
8 and naturally most arbitrations, like most disputes, end up in
9 settlements, so they knew we were suing an entity that had no
10 assets, so obviously we weren't looking for a recovery against
11 that entity, but rather we were seeking to establish our
12 contractual right to be compensated for what was a clear breach
13 of our contract, and yet they didn't intervene.

14 Just to be clear, your Honor, essentially what
15 happened in that arbitration is that the parties engaged in the
16 initial hearing, it was a full hearing with witnesses and
17 cross-examination, and then there was a recess that was
18 actually extended because of the difficulty in getting
19 documents from third parties. But then as it happens in most
20 cases, there was a settlement of it.

21 THE COURT: But does it happen in most cases that
22 there is \$139 million settlement with an entity that has no
23 assets? Is that typical?

24 MR. AGUSTI: Your Honor, it is certainly allowed by
25 the rules. I can't say how often entities enter into awards

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1 and for what amount, but it certainly would be normal for the
2 purpose of the arbitration, your Honor. The answer is I don't
3 know, your Honor.

4 THE COURT: Right. It is not really an arbitration
5 award. It is a capitulation, isn't it, signed off on by an
6 arbitrator? There was no factual finding by the arbitrators?
7 When I first read your complaint, I thought that there
8 was a full blown arbitration and a true adversary proceeding
9 that resulted in \$139 million award, but now I'm hearing that
10 the \$139 million award was really a settlement with an entity
11 that was essentially defunct.

12 MR. AGUSTI: Your Honor, it was a settlement with that
13 entity and with, of course, it's the entities that controlled
14 that entity, just to be very clear, but that is absolutely
15 right. To the extent that there is a problem in that, to the
16 extent that that creates a reason why the court in the next
17 case --

18 THE COURT: You might be right about that, it might be
19 an issue that the proposed intervenors here are free to raise
20 in the Pennsylvania action, but let me hear from Mr. Zensky
21 about that in the first instance.

22 MR. AGUSTI: Your Honor, I did want to say something
23 about the contingency of the interest, but I am happy to sit
24 down now.

25 THE COURT: Okay. Thanks.

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1 MR. ZENSKY: I have a few slides which I have provided
2 to Mr. Agusti when we arrived. May I approach the Bench?

3 THE COURT: Okay. Sure.

4 (Pause)

5 THE COURT: Mr. Zensky, do you have a copy for the
6 Court Reporter?

7 MR. ZENSKY: We do, your Honor.

8 (Pause)

9 MR. ZENSKY: Good morning, your Honor.

10 I largely agree with Mr. Agusti's recitation of the
11 chronology of events. Apart from his description of the merits
12 of the Pennsylvania case, that is not before the court and I am
13 not going to respond to that part of his comments.

14 His point that we were aware of the arbitration is
15 irrelevant, as I will make clear to your Honor in a moment.
16 Let me take you through the slides so you know who the parties
17 are and understand how it is and why it is we are seeking
18 intervention here.

19 One of our clients, look at Slide 1, your Honor, this
20 shows the corporate alignment as of February 2013. Our client
21 Ferrellgas didn't have any ownership interest in any of the
22 entities that were involved in the arbitration or in the
23 dispute that Mr. Agusti described. You can see that there was
24 a corporate family called Bridger, LLC and Bridger Logistics
25 owned a number of subsidiaries, including an entity called

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1 Bridger Transfer Services, and that is the entity that Mr.
2 Agusti described to you that contracted with his client,
3 Eddystone, to trans-load the oil on a take-or-pay agreement in
4 Pennsylvania, and that agreement is referred to as the rail
5 services agreement, and that is what the RSA refers to, your
6 Honor.

7 If you flip to the next slide, in June of 2015 our
8 client Ferrellgas acquired Bridger Logistics from the Bridger
9 family of companies along with its subsidiaries. So you can
10 see that Bridger Logistics moved from the right side of the
11 chart to the left side, and in buying Bridger Logistics, we
12 also acquired the subsidiaries of Bridger Logistics, which
13 included the entity that had contracted with Eddystone, and you
14 can see that now on the left side of the page.

15 In order to avoid confusion between the now separate
16 companies, the Bridger people and the entities that were not
17 sold renamed themselves Jamex, and that is an acronym for the
18 owner of those entities, James Balangi. So you see Jamex and
19 Jamex Marketing are still on the right side.

20 Then we get to February 1, a transaction which Mr.
21 Agusti briefed you on, your Honor. As a result of a number of
22 disputes and discussions that were ongoing between our client
23 and the Jamex Group, part of the resolution of that, we sold
24 Bridger Transfer Services back to the Jamex family of
25 companies, subject to the contract that we're here about today,

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1 and you can see that Bridger Transfer Services along with the
2 contract with Eddystone gets transferred to Jamex Transfer
3 Holdings and is renamed Jamex Transfer Services, again subject
4 to the terms of the contract with Eddystone. There are a
5 variety of gives and gets as part of that sale, and that was
6 consummated effective February 21, 2016.

7 The next slide is critical to understand why we would
8 have no incentive to try to intervene in the arbitration
9 proceeding despite being aware of it. Leaving aside under the
10 Society of Maritime Arbitration rules there is no such thing as
11 intervention, it is not subject to federal rules and there was
12 no controversy between us and their client, and that is because
13 when we sold Bridger Transfer Services to Jamex on February 1,
14 we were fully paid up under the contract.

15 There was no dispute between my group of companies and
16 the Eddystone people that we had paid all the debts that came
17 due as of that day, and you don't have to take my word for it,
18 you can take Mr. Agusti's word for it because it is right in
19 the pleadings he had filed in this Court and in the
20 Pennsylvania court.

21 Under Paragraph 12 of the motion to compel, which you
22 heard Mr. Agusti talk about, Eddystone alleged that prior to
23 February 1, Jamex Transfer Services, which was then known as
24 Bridger Transfer Services, had made all such volume deficiency
25 payments when due, but immediately after Bridger Logistics sold

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1 JTS to Jamex Marketing, Bridger Logistics stopped bringing
2 trains in and out of the trans-loading facility and ceased all
3 performance under the RSA

4 Mr. Agusti told you that, frankly. He said after the
5 sale, JTS defaulted on the take-or-pay agreement. If that
6 allegation in this courtroom or this courthouse was not enough,
7 in the Pennsylvania case they made the same allegation that
8 Bridger Logistics and its affiliates made that BTS was funded
9 adequately all the way up until the sale, to make all payments
10 due to his client, and that was the case.

11 On top of that, your Honor, when we sold Bridger
12 Transfer Services to THE Jamex family, in the contract of sale
13 Jamex explicitly assumed responsibility for the take-or-pay
14 agreement going forward, and we got a guarantee from a parent
15 that that would be the case. So we were fully paid up and we
16 got an explicit contractual promise from the buyer dealing with
17 Mr. Agusti's client and making those take-or-pay payments,
18 performing under that contract was going to be the buyer's
19 responsibility.

20 Given that lay of the land, when you turn to the next
21 slide, you can see that the arbitration proceeded following the
22 default. The arbitration was solely between the
23 counter-parties to that restructuring rail services agreement.
24 They're the only parties that are in that contract, the only
25 party responsible to make payments to ERC is Jamex Transfer

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1 Services. They went into arbitration. Under what possible
2 reason would we have to intervene into their arbitration about
3 a default that occurred after we sold the company and when we
4 were fully paid up as of the time of the sale?

5 Yes, we were aware of the arbitration. They
6 subpoenaed us to produce documents, but they never sent us a
7 letter that said and be forewarned if we get a judgment in that
8 arbitration, we are coming after you to pay for it.

9 I don't know on what theory and we don't think they
10 have a valid theory in Pennsylvania, but the existence of the
11 arbitration is a complete red herring, doesn't distinguish the
12 Association of Contracting Partners case, which I will discuss
13 in a moment.

14 THE COURT: Is Jamex currently in bankruptcy?

15 MR. ZENSKY: No, none of the Jamex entities are in
16 bankruptcy, which is part of the smell factor about the
17 settlement. They haven't sued any Jamex entity to try to
18 collect on their \$139 million judgment.

19 THE COURT: Why hasn't Jamex counsel appeared in this
20 action?

21 MR. ZENSKY: A good question, which proves right away
22 one of the elements of intervention, there is no one here to
23 represent our interests. That is because Jamex settled with
24 them and capitulated, as your Honor put it, and we don't know
25 what sort of releases up the parent chain they got.

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1 For all we know, Mr. Agusti's client may have made a
2 payment to Jamex to get them to capitulate and enter this dummy
3 settlement so that they could get a confirmation in this Court
4 and wave it around to try to chase my client for a breach of
5 contract that occurred after we sold the business.

6 We don't know that, but we need to be here to protect
7 our interests and make sure that a settlement -- and using that
8 word loosely -- that is not the product of an adjudication, not
9 the product of adversary process is not used improperly in any
10 other proceeding or court in this country, whether in the
11 Pennsylvania case or potential bankruptcy of one of the Jamex
12 entities. We can't predict what is going to happen.

13 I am finishing up on Slide 5. As you heard Mr. Agusti
14 say, they had an initial hearing. There was no adjudication of
15 any kind rendered. His petition in this case does not refer to
16 any decision of the arbitrators. It just said they had a
17 hearing, there were more hearings scheduled, and then all of a
18 sudden they settled.

19 Just to put that piece to rest, we had no reason to
20 know we should intervene. We would not have been allowed to
21 intervene, as far as I can tell, and he didn't cite any rule to
22 you that suggesting we could. When you turn to the contracting
23 Partners case, you see that is not part of the holding at all,
24 your Honor.

25 If you turn to the next slide, the rules are very

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1 clear that govern our motion to intervene the requested motion,
2 your Honor. Federal Rule 81 says that the federal rules apply
3 in proceedings under the Federal Arbitration Act, which
4 includes the proceeding we're here on today, their motion to
5 confirm, or their action to confirm.

6 There is no exception. It doesn't say the
7 intervention rules don't apply, but everything else does. It
8 says the federal rules apply to the extent applicable and
9 invoked by any party in a proceeding under 9 USA 1, et seq.

10 Of course, we have 24 (a) (2), which grants
11 intervention as of right, and 24 (b) (1) (B) which is permissive
12 intervention, and we satisfy both tests and we'll certainly
13 satisfy them if your Honor permits us to make the motion.
14 Intervention as of right involves four elements. Timely
15 motion. We sent our letter to your Honor 10 days after we
16 became aware of their petition to confirm, that is, Mr. Agusti
17 did not say we slept on our rights once they moved to confirm
18 the arbitration.

19 We have to claim an interest related to the property
20 or transaction that is the subject of this action. In their
21 Pennsylvania case they cite to the arbitration award as a basis
22 for establishing the liability that they now want to collect
23 derivatively against us, so obviously we claim an interest in
24 this action.

25 THE COURT: Can't your clients contest and defend

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1 against Eddystone's claim that your clients are responsible for
2 paying the judgment, assuming this Court confirms it in the
3 Pennsylvania action?

4 MR. ZENSKY: We certainly can defend against the
5 argument there is a basis to pierce the corporate veil, whether
6 there was a breach of fiduciary duty, et cetera, and if your
7 Honor denies intervention or grants it, but nonetheless allows
8 the judgment, we would argue it cannot be res judicata against
9 our clients as a non-party to the arbitration.

10 I can't predict how the Pennsylvania court will rule
11 on that. They're going to argue in whatever court in this
12 country they try to pursue us or other parties in, that if you
13 give them a judgment, that that is final, binding and
14 dispositive on the question of whether JTS was indebted to
15 Eddystone under a take-or-pay agreement. Remember, JTS had
16 defenses they asserted that they interfered with the
17 performance of the contract in a number of ways and defaulted
18 themselves. They just capitulated and never pressed those
19 defenses in the hearing. We owned this company for a time and
20 I believe those defenses had substantial merit, but for
21 whatever reason they're a defunct company and they gave up.

22 They will also argue that the 139 million is
23 dispositive of how much JTS was indebted to Eddystone. That is
24 not present value. That is the next three years of payments
25 that they were seeking under the contract, just rubber stamp.

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1 That is what Jamex apparently did, that they're not here to
2 tell us otherwise. They say okay, you can have a judgment,
3 just don't enforce it against us, right, because they were
4 planning to come after us, the former owner for this.

5 Your Honor, can I predict with certainty whether the
6 judge in Pennsylvania will or won't accept their argument on
7 res judicata? No, I can't. If the standard of intervention
8 was that I had to prove to you that the outcome of this action
9 would necessarily impair our rights, I would not be able to
10 satisfy that standard, but the rule doesn't require me to
11 establish that.

12 If you go back to the text of 24 (a) (2), we only have
13 to establish that we are situated such that disposing of this
14 action may as a practical matter impair or impede our ability
15 to protect our interests. If I wasn't here today seeking
16 intervention, when we got to Pennsylvania you can bet your last
17 dollar Mr. Agusti would get up and say Mr. Zensky, where were
18 you in New York? You should have been there to seek to oppose
19 the confirmation of the judgment. You were aware of it and now
20 that judgment is final and binding, you can't contest how much
21 Jamex Transfer Service owes to Eddystone.

22 I hope that is responsive to your Honor's question.

23 Let me turn to the cases and I will sit down.

24 THE COURT: No. Yes. Look, I am not sure how I come
25 out on this application, and as a consequence of that, I am

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1 going to fix a briefing schedule on the proposed intervenor's
2 motion.

3 MR. ZENSKY: I will hold my argument until the day we
4 come back unless your Honor wants a brief response on the case
5 law discussion?

6 THE COURT: If you want to give me very brief
7 responsible now, that is fine. I will take it, recognizing
8 that I think next week the Supreme Court is hearing argument in
9 an appeal involving intervention and what the contours of
10 intervention are, and I understand from afar, from down in the
11 trenches that the case may be of some consequence in the
12 future.

13 MR. ZENSKY: Understood, your Honor. I think it is
14 more fun down in the trenches.

15 In any event, just briefly, the Katir and Dundas case
16 Mr. Agusti cited are cases where there was no pending motion to
17 confirm or vacate between the parties to the arbitration. A
18 third party shows up and files the petition with the court
19 initiating a proceeding and asking for vacatur of a
20 confirmation award. That is not what happened here, your
21 Honor.

22 Mr. Agusti started this proceeding, and we sought
23 intervention in an otherwise validly commenced petition under
24 the Federal Arbitration Act. Those cases that he cited have no
25 bearing. If he had not filed, perhaps we would not have the

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1 right to have done anything, but then again he wouldn't have
2 been able to convert his settlement into a judgment without
3 filing for confirmation. So we have that.

4 The Association of Contracting Plumbers is squarely on
5 point. The Second Circuit affirmed that non-parties to an
6 arbitration were not only permitted to intervene into the
7 proceeding, but having intervened, had all the rights of a
8 party, including the right of a party under 9 U.S.C. Section 10
9 to oppose confirmation of the award, and they successfully
10 argued, the intervenors won the case by establishing the
11 arbitration that went on between the other two parties was
12 outside the scope of the arbitration clause.

13 The Second Circuit cannot be clearer in saying that,
14 reading from the decision, your Honor, under Headnote 1:

15 "Section 10 of the arbitration act allows the court to
16 vacate an arbitration award" --

17 THE COURT: Slowly, please.

18 MR. ZENSKY: -- "upon the application of any party to
19 the arbitration if certain conditions are found to exist,
20 citing the Federal Arbitration Act.

21 "The threshold question here is whether under Section
22 10 a District Court may entertain the motion of a non-party to
23 sets aside an arbitration award. There is little question that
24 the UA" -- you heard Mr. Agusti talk about Local 6638 and MCA
25 -- "have a substantial interest in the arbitration and

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1 consequently may intervene as of right under Rule 24 (a).

2 Once the right to intervene is established, the
3 intervenor status is equivalent to that of a party. So having
4 intervened, we are permitted to raise a defense under the
5 Federal Arbitration Act, which is exactly what we will be doing
6 if your Honor grants the application to intervene, and that
7 would be that the settlement, the alleged settlement award was
8 procured by undue means, fraud or corruption, which is an
9 explicit ground under the Federal Arbitration Act to deny
10 confirmation of an award. That is what we'll address in our
11 motion to intervene. Of course, we won't be able to address
12 the merits. This is just the intervention itself at this
13 point.

14 THE COURT: When do you want to file your motion?

15 MR. ZENSKY: I have spoken briefly to Mr. Agusti
16 before we came in. I was hoping we could do it sometime the
17 first week of May, so we have to respond to the briefs he
18 indicated his client is filing today.

19 THE COURT: Do you want to file it May 5?

20 MR. ZENSKY: 5 or 6, if that is suitable for your
21 Honor?

22 THE COURT: The 6th is a Saturday.

23 MR. ZENSKY: I am sorry. The following Monday or
24 Tuesday?

25 THE COURT: May 9.

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1 MR. ZENSKY: Thank your Honor.

2 THE COURT: Tuesday, May 9.

3 Mr. Agusti, how much time do you want to oppose the
4 motion?

5 MR. AGUSTI: Your Honor, the other case is quite busy.
6 If I could have the court's indulgence for three weeks to
7 respond, we would appreciate it.

8 THE COURT: You've got it, except I'll make it three
9 weeks and a couple of days because otherwise someone in your
10 office will be working on Memorial Day Weekend.

11 MR. AGUSTI: Thank your Honor.

12 THE COURT: File your opposition by June 2. Can you
13 get me a reply by June 12?

14 MR. ZENSKY: Yes, we can, your Honor. Thank you.

15 THE COURT: All right. I'll set that down for an oral
16 argument.

17 MR. ZENSKY: I am out of the country June 29th to July
18 9, your Honor. My daughter is graduating high school, so it is
19 a family celebration trip.

20 THE COURT: Bastille Day, July 14.

21 MR. ZENSKY: Fine, your Honor.

22 THE COURT: Now, Mr. Agusti, if you're coming from
23 Washington, what is the most convenient time? Later in the
24 morning?

25 MR. AGUSTI: Your Honor, later in the morning is fine,

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Conference

1 but I am quite flexible.

2 THE COURT: We'll set it for 12:00 noon.

3 MR. AGUSTI: Your Honor may I be heard for a quick
4 moment on an issue?

5 THE COURT: Sure.

6 MR. AGUSTI: Your Honor, I did want to clarify just
7 two things factually that came up during the discussion just to
8 make sure that there is not any bad perception about Weil
9 Gotshal's counsel to the Jamex parties.

10 Essentially they had understood that they were going
11 to be participating in today's hearing but apparently neglected
12 to enter an appearance, and for that reason it was suggested
13 they could not appear today, but they did wish to appear today,
14 your Honor. I just wanted to be clear it is not they're not
15 here for disinterest.

16 THE COURT: All right. The action was filed on
17 February 17th. There has been no appearance, but someone from
18 Weil called my law clerk this morning to ask whether -- they
19 had an interest, but could they participate by telephone?

20 Without any appearance --

21 MR. AGUSTI: I want to be clear --

22 THE COURT: -- I told my clerk to tell them that is
23 not the way proceedings work.

24 MR. AGUSTI: Yes, your Honor.

25 THE COURT: And they were a subway ride away.

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1 MR. AGUSTI: Yes, your Honor. I am not defending

2 them. I am making sure the record is clear that they --

3 THE COURT: Maybe someday they will file a notice of

4 appearance. I don't know, but --

5 MR. AGUSTI: Maybe very soon your Honor. Your Honor,

6 the other thing --

7 THE COURT: -- if they were sufficiently concerned,

8 the firm is big enough, they'd have somebody down here, most

9 importantly the person who is responsible for the case, unless

10 they're out of the country.

11 There isn't any reason why they shouldn't be here to

12 address the court especially when there are letters filed in

13 the case suggesting that it was a collusive settlement, so I am

14 sure there will be other pages to be turned in this case.

15 MR. AGUSTI: Your Honor, I just wanted to be --

16 THE COURT: Because you did, I felt that I had to

17 fully disclose as well that I declined their invitation to

18 allow them to participate by telephone.

19 MR. AGUSTI: Thank you, your Honor.

20 THE COURT: Because I am part of the old school, okay?

21 If they had made the request a few days earlier and

22 everyone was on board, I may very well likely have granted it,

23 but not this sort of midnight application from someone who

24 purports to have an interest but can't file an appearance on

25 ECF --

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Conference

1 MR. AGUSTI: Yes, your Honor.

2 THE COURT: -- in a \$139 million case. I'll see you
3 all on July 14th.

4 Before we adjourn, Mr. Kelley, do you want to weigh in
5 on this matter? I am sorry.

6 MR. KELLEY: Thank you, your Honor. I do, but just
7 very briefly. I just want to echo what Mr. Zensky said. I
8 represent Julio Rios and Mr. Gamboa. I believe they're
9 identically situated with regard to the Bridger parties, and
10 they were officers of the Bridger parties, and are now
11 defendants in the Pennsylvania action.

12 So we would ask we just join the arguments made by Mr.
13 Zensky on behalf of the Bridger parties, and we are looking
14 forward to coordinating with Akin with regard to briefing and
15 discovery and things like that to ensure there is no possible
16 delay.

17 THE COURT: Do these deadlines that I fixed, are they
18 going to --

19 MR. KELLEY: Yes, your Honor, they work for us.

20 THE COURT: I presume that there can be one
21 consolidated motion for intervention?

22 MR. ZENSKY: Absolutely, that is what Mr. Kelley was
23 getting at.

24 THE COURT: One set of papers.

25 MR. KELLEY: Exactly, yes.

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1 THE COURT: We are ending on a happy note then, all
2 right.
3 Have a great Holiday.
4 (Court adjourned)
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